

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Steven Kuhn,	)	C/A No.: 2:18-cv-2809 DCN BM
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>ORDER</u></b>
	)	
The Yates Companies, Inc.; Jesco, Inc.; and	)	
WG Yates Construction of South Carolina,	)	
LLC,	)	
	)	
Defendants.	)	
_____	)	

The above referenced case is before this court upon the magistrate judge's recommendation that defendants' motions to dismiss be denied without prejudice and allow plaintiff fifteen (15) days to file a formal motion to amend the complaint.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).<sup>1</sup> **No objections have been filed to the magistrate judge's**

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<sup>1</sup>In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him

**report and recommendation.**

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED**, and defendants' motions to dismiss are **DENIED** without prejudice.

**IT IS FURTHER ORDERED** that plaintiff shall have fifteen (15) days from the date of this order file a motion to amend the complaint and submit a proposed amended complaint to the court for review. Plaintiff should specifically address the defects noted by defendants, unless plaintiff believes they are without merit. No further amendment will be allowed absent a showing of good cause. Defendants should respond to any motion to amend as provided by Rule.<sup>2</sup>

**AND IT IS SO ORDERED.**



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David C. Norton  
United States District Judge

February 26, 2019  
Charleston, South Carolina

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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of what is required." Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.

<sup>2</sup>If the motion to amend filed by plaintiff is denied, such that plaintiff's current complaint remains his pleading in this case, defendants may move to have their currently filed motions to dismiss restored to the docket at that time. The court will then decide that motion on the already filed briefs of the parties relating to plaintiff's current complaint.